

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF IOWA  
WESTERN DIVISION

JOEL LEE GOOSMANN,

Petitioner,

vs.

STATE OF IOWA, sub nominee,  
JOHN AULT, Warden, Anamosa  
State Penitentiary,

Respondent.

No. 01CV-4053

ORDER

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This is a matter involving 28 U.S.C. § 2254, petitioned by Goosmann. The respondent has filed a motion to dismiss which is resisted by the petitioner.

In a nutshell, the matter now before the Court is whether or not the, "Motion For Appointment Of Counsel And Request To Proceed In Forma Pauperis," designated as Exhibit 1, filed on July 17, 1995, contained sufficient information to qualify as an application under Iowa Code § 822, "Postconviction Procedure." Said section relates to how to commence a proceeding in state court. In Iowa Code § 822.2, "Situations where law applicable," it states in pertinent part:

Any person who has been convicted of, or sentenced for, a public offense and who claims that:

1. the conviction or sentence was in

violation of the Constitution of the United States or the Constitution or laws of this

state; . . . may institute, without paying a filing fee, a proceeding under this chapter to secure relief.

Iowa Code § 822.3, "How to commence proceeding-limitation," in pertinent part, states as follows:

A proceeding is commenced by filing an application verified by the applicant with the clerk of the district court in which the conviction or sentence took place.

. . .

The supreme court may prescribe the form of the application and verification. The clerk shall docket the application upon its receipt and promptly bring it to the attention of the court and deliver a copy to the county attorney and the attorney general.

Iowa Code § 822.4, "Facts to be presented," sets out as follows:

The application shall identify the proceedings in which the applicant was convicted, give the day of the entry of the judgment of conviction or sentence complained of, specifically set forth the grounds upon which the application is based, and clearly state the relief desired. Facts within the personal knowledge of the applicant shall be set forth separately from other allegations of facts and shall be

verified as provided in section 822.3. Affidavits, records, or other evidence supporting its allegations shall be attached to the application or the application shall recite why they are not attached. The application shall identify all previous proceedings, together with the grounds therein asserted, taken by the applicant to secure relief from the conviction or sentence. Argument, citations, and discussion of authorities are unnecessary.

Hearing was had, and the parties submitted three (3) exhibits for consideration by the Court.

The first exhibit, Exhibit 1, "Motion For Appointment Of Counsel And Request To Proceed In Forma Pauperis," filed on July 17, 1995, in pertinent part states:

IN THE IOWA DISTRICT COURT FOR WOODBURY COUNTY

JOEL GOOSMANN,	*	CASE NO. 44538
Applicant,	*	MOTION FOR APPOINTMENT
vs.	*	OF COUNSEL AND REQUEST
	*	TO PROCEED IN FORMA
		PAUPERIS
THE STATE OF IOWA, *		
Respondent.	*	

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COMES NOW the Applicant, in pro-se, and pursuant to Section 822.A.5 of the Iowa Code, hereby submits a MOTION FOR APPOINTMENT OF COUNSEL AND A REQUEST TO PROCEED IN FORMA PAUPERIS, and in support thereof he states as follows:

1. That on November 4, 1992, he was convicted of first degree murder in Woodbury County.

2. That he filed an appeal and said appeal was affirmed on November 28, 1994.

3. That he is currently serving a life sentence without parole at the Iowa Men's Reformatory in Anamosa.

4. That he wants to file a postconviction relief action in regards to this conviction and that due to the complexity of the issues which will be brought forth in this matter, the Applicant requests that the court appoint counsel to represent him. There are many, many medical records, exhibits, and transcripts that an attorney would be better in handling and obtaining than a pro-se litigant far away in prison.

5. That there does exist evidence of material facts that have not been presented and heard which did not become known by the Applicant until recently.

6. That although a criminal defendant has no constitutional right to an attorney in a State Postconviction Action proceeding, appointment of counsel rests in the sound discretion of the district court and trial judges are ordinarily encouraged to appoint counsel for most indigent [post-conviction relief] applicants, See Leonard vs. State, 461 NW2d 465.

7. That the Supreme Court further said the following in Hall vs. State, 246 NW2d 276 and State vs. Grady, 367 NW2d 263, 265, 266 (Iowa App. 1985); "Upon request and on showing of in-ability to pay, counsel should be appointed for purposes of filing applications for postconviction relief; and on filing of such application, trial court must then determine whether counsel should be retained or appointed for

hearing and appeal, basing its determination on application for postconviction relief as read in light most favorable to Applicant."

8. Applicant is not an attorney or a student of the law and due to the seriousness and complexity of the issues in his case he respectfully asks the court to appoint counsel to investigate and file an application for postconviction relief. Applicant, while recognizing that the Iowa Rules of Court state that a defendant's choice of counsel should be considered when making an appointment, respectfully requests that Mr. Bradford F. Kollars of 402 Benson Bldg., in Sioux City be appointed to represent him. There appears to be no conflict of interest in appointing Mr. Kollars.

9. That the Applicant is indigent and submits an affidavit of support.

WHEREFORE, the Applicant respectfully asks the court to grant this Motion and appoint said attorney to represent and further that he be allowed to proceed as indigent.

Respectfully submitted,  
/S/  
Post Office Box "B"  
Anamosa, Iowa 52205-0010

The second exhibit, Exhibit 2, "Order Re: Appointment of Counsel," states in pertinent part as follows:

IN THE IOWA DISTRICT COURT FOR WOODBURY COUNTY

JOEL LEE GOOSMANN, )	NO. 44538CR
Plaintiff, )	ORDER RE: APPOINTMENT
vs. )	OF COUNSEL

STATE OF IOWA, )

Defendant. )

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NOW on this 20th day of July, 1995, the Plaintiff's Application for Appointment of Counsel comes before the Court. The Court finds that the application was filed in St. v. Goosmann, CR. No. 44538.

1. The Plaintiff is incarcerated and appears to be indigent and unable to employ counsel.

2. In the light of Hall vs. States of Iowa, 246 N.W.2d 276 (Iowa 1976), the Court finds that it is appropriate to appoint counsel to represent the Defendant in relation to post-conviction relief proceedings.

IT IS THEREFORE ORDERED as follows:

I. Robert Tiefenthaler, Attorney at Law, is appointed as counsel to represent the Plaintiff in relation to his application for post-conviction relief.

II. The Court may later make a determination as to whether or not counsel shall be retained for the hearing and appeal in regard to the application, pursuant to the considerations indicated in Furgeson vs. State of Iowa, 217 N.W.2d 613 (Iowa 1974), and Chapter 663A of the Iowa Code.

BY THE COURT:

/S/

\_\_\_\_\_  
MICHAEL S. WALSH, Judge of  
the Third Judicial District  
of Iowa

The third exhibit, Exhibit 3, is a pleading entitled, "Application For Postconviction Relief Pursuant To Iowa Code Chapter 822," and states partially as follows:

IN THE IOWA DISTRICT COURT FOR WOODBURY COUNTY

JOEL GOOSMANN,	)	LAW NO. PCCV113461
Applicant,	)	APPLICATION FOR POST-
	)	CONVICTION RELIEF
vs.	)	PURSUANT TO IOWA CODE
	)	CHAPTER 822.
STATE OF IOWA,	)	
Respondent.	)	

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I.

Conviction or sentence concerning which postconviction relief is demanded:

A. Crime and statute applicant was convicted of violating: Murder in the First Degree and Going Armed with Intent; Iowa Code Sections 707.1 and 708.8.

B. Criminal Case No: Woodbury County No. 44538.

C. District court and judge that entered judgment of conviction or sentence: District Court of Woodbury County, The Honorable Robert C. Clem, Judge.

D. Date of entry of judgment of conviction or sentence: December 21, 1992.

E. Sentence: Life imprisonment.

F. Place of confinement: Iowa Men's Reformatory

at Anamosa.

G. Plea:

\_\_\_\_\_ Guilty  
\_\_\_\_\_ X Not Guilty

H. Trial:

\_\_\_\_\_ X Jury  
\_\_\_\_\_ Judge only

II.

Prior proceedings:

A. Conviction or sentence was \_\_\_\_\_ appealed

1. To Iowa Supreme court.

2. Grounds raised: Denial of Motion To change Venue and Failure to Prove Beyond a Reasonable Doubt Defendant committed Murder in the First Degree.

3. Result: Jury verdict and denial of motion both upheld.

. . .

III.

Grounds upon which application is based (grounds checked must be fully explained in space below):

A. X The conviction or sentence was in violation of the Constitution of the United States or the Constitution or laws of this state.

. . .

F. X The conviction or sentence is otherwise subject to collateral attack upon ground(s) of alleged error formerly available under any common law,

statutory, or other writ, motion, proceeding, or remedy.

Specific explanation of grounds and allegation of facts: Ineffective assistance of counsel.

. . .

VI.

The following documents, exhibits, affidavits, records, or other evidence supporting this application are not attached too the application (list):  
\_\_\_\_\_.

These items are not attached for the following reason(s): Attorney for the claimant has to get and review all appropriate files so that he can complete discovery.

VII.

Relief desired (state clearly): Change of venue and new trial.

VIII.

The applicant is not able to pay court costs and expenses of representation and has had counsel appointed to represent him concerning this application. (If applicant indicates inability to pay court costs and expenses of representation and does desire to have counsel appointed, applicant shall attach a financial statement to this application. See Iowa Code Section 815.9 and 815.10.) Attached hereto is a copy of the Order appointing counsel.

/S/ Robert Tiefenthaler  
Attorney for Applicant

Robert Tiefenthaler  
Address: 304 Terra Centre

Box 5332  
Sioux City, IA 51102

Copy: R. Tiefenthaler  
C. Attorney  
Assistant Attorney  
9-16-96

It is important to have an understanding of the chronology to visualize the sequence of events.

### Chronology

February 9, 1995	State Procedendo issues from <u>direct</u> appeal (denies relief - concludes defendant had a fair trial).
July 11, 1995	Petitioner mails to State Court Woodbury County, Motion Requesting Appointment of Counsel. <u>Exhibit One.</u>
April 24, 1996	Antiterrorism and Effective Death Penalty Act (AEDPA) passes - 1 year Statute of Limitations (SOL) begins to run.
September 16, 1996	Petitioner files for State Post-Conviction Relief. (AEDPA Statute of Limitations tolls (stops) after running 145 days from April 24, 1996). <u>Exhibit Three.</u>
September 28, 2000	State Procedendo issues re: Denies Post-Conviction Relief (AEDPA Statute of Limitations starts running again).
May 8, 2001	AEDPA 1 year Statute of Limitations expires (365 days that were not tolled have passed since April 24, 1996) April 24, 1996 to September 16, 1996 = 145 days. September 28, 2000 to May 8,

2001 = 220. Total = 365 days expired.

May 24-31, 2001	Petition to proceed in U.S. District Court was Mailed (mailbox rule).
May 31, 2001	Application to Proceed Without Prepayment of Fees and Affidavit filed by Petitioner. (Doc. No. 1).
July 3, 2001	Judge Zoss grants <i>in forma pauperis</i> status. Initial Review Order filed. (Doc. No. 2).
July 3, 2001	Federal habeas petition actually filed. (Doc. No. 3)

The Court should first consider the wording of the statute. In Rouse v. State of Iowa, 110 F.Supp.2d at 1124, the Court said:

The task of resolving the dispute over the meaning of [a statute] begins where all such inquiries must begin: with the language of the statute itself . . . When construing a statute, we are obliged to look first to the plain meaning of the words employed by the legislature . . . citing Chevron, 467 U.S. at 842-43, 104 S.Ct. 2778. . . The Supreme Court describes this rule as 'one, cardinal canon before all others.' . . . Thus, 'courts must presume that a legislature says in a statute what it means and means in a statute what it says there.' . . . When the language of a statute is plain, the inquiry also ends with the language of the statute, for in such instances, 'the sole function of the courts is to enforce [the statute] according to its terms.' . . . When the statutory language provides a clear answer, the analysis ends.

Id. at 1124.

The bottom line is that the petitioner first filed Exhibit 1. As is shown, it covers two (2) pages and includes several of the things that are required by the Iowa Code sections set out above. The basis for the petitioner's claim in a nutshell is that Exhibit 1 provides most of the information that is set out in Exhibit 3, which is, in fact, the form usually used for said application.

The respondent points out that Exhibit 1, governed by Iowa Code Section 822.5, set out on page 2 herein, really does not have the precise information needed to make it a properly filed application. The respondent points out that Exhibit 1 is not an application and that in said exhibit the petitioner asks that he be able to file (in the future) an application. So, it is clear that the petitioner, himself, did not really construe Exhibit 1 to be an application or to contain everything that should be in an application. The bottom-line is whether or not Exhibit 1, which was mailed on July 11, 1995, commenced the tolling of the statute of limitations. The new Antiterrorism and Effective Death Penalty Act (AEDPA) sets out that the one (1) year statute of limitations is tolled from the day an application is filed in

the postconviction court. The date on Exhibit 3, which is the usual application form, is May 31, 2001. In looking at the chronology, of course there is a distinct advantage if the statute is tolled on the earlier date.

On April 24, 1996, the new AEDPA law passes and the days start running for the petitioner to file his application for post-conviction relief. On September 16, 1996, 145 days later, the petitioner filed Exhibit 3, which stopped the days from running. On September 28, 2000, the state court denies Exhibit 3 relief. The days start running again. There are 220 days left. Those 220 days end (expire) on May 8, 2001. Even if we conclude that the petition for relief in this Court was filed on the date it was mailed, May 24, 2001, it is still sixteen (16) days late.

The AEDPA is a tough new law which sets out, in the statute, that unless days are actually stopped or tolled the petitioner cannot file a viable petition in federal court after 365 untolled days have passed. As set out above, the petitioner here is at least sixteen (16) days late.

The Court would like to give the petitioner some relief, but there is just no way that this Court can stretch Exhibit 1 into

a viable application for relief. When that cannot be done, the statute must be governed by the day that the application, Exhibit 3, was filed.

**FOR GOOD CAUSE SHOWN, IT IS THEREFORE ORDERED** that the respondent's motion to dismiss (Docket No. 5) is hereby **sustained**.

**IT IS SO ORDERED** this \_\_\_\_ day of December, 2001.

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Donald E. O'Brien, Senior Judge  
United States District Court  
Northern District of Iowa